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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/869,523	10/18/2001	Gerard Mougey	Q64953	4595

7590 12/08/2003

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EXAMINER	
PRICE, CARL D	

ART UNIT	PAPER NUMBER
3749	

DATE MAILED: 12/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/869,523	MOUGEY, GERARD	
	Examiner	Art Unit	
	CARL D. PRICE	3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *25 September 2003*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-5* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-5* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

13)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a) ☐ The translation of the foreign language provisional application has been received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *11*.
4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Response to Arguments

Applicant's arguments with respect to claims 1-5 have been considered but are moot in view of the new ground(s) of rejection.

Applicant has amended the claims to be of a scope not previously examined.

Applicant has amended claim 1 to include the further limitation *of* ***"wherein mixing tube (5) is a conical upper part (5) of the venturi (2)".***

The applicant has added new claims 4 and 5.

Applicant's attention is directed to the prior art reference of Wall (of record) that shows and discloses a structure that meets the limitations of applicant's claims. See the rejection of the claims set forth herein below.

Claim Rejections - 35 USC § 112

Claims 1-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is noted that applicant has included reference characters corresponding to elements recited in the detailed description of the drawings and used in conjunction with the recitation of the same element or group of elements in the claims and which are enclosed within parentheses so as to avoid confusion with other numbers or characters which may appear in the claims. However, the "use of reference characters is to be considered as having **no effect** on the scope of the claims". See MPEP § 608.01(m). In this regard applicant's use of the language "a wall of mixing tube (5)" and "wherein mixing tube (5)" appears to rely on reference numeral "(5)" to limit the scope of the claim. These claims are therefore vague and indefinite since it is unclear whether applicant intends any structure illustrated in the drawing figures to limit the scope of the claims. By way of example, the last two lines of claim 1 should be changed to ... parallel to a downstream wall portion of the venturi defining a mixing tube, wherein the mixing tube is a conical upper part of the venturi". Also, the term "in", in line 3 of claim 1 should be - - along - - since it is confusing to describe an element to be located "in" a geometrical point of reference. Lines 3-5 of claim 1 are confusing and do not properly describe the invention describe in applicant's specification and illustrated in the drawing figures. More specifically, the phrase "around the central supply (1) of the body forming the venturi" is confusing. It is noted that the "central supply **(1)**" (see figure 1) is defined, in lines 2-3 of claim 1, wherein a "plurality of gas tubes (6) are arranged in at least one ring around the central supply (1) (see figures 1 and 2a). It is noted that the central opening (1) and surrounding tubes (6) are a part of the separate fuel supply structure (8,9,etc.) and do not define portions of the venturi (2) as stated by applicant, in line 5 of claim 1, as "... are arranged in at least one ring around the central supply (1) of the body forming a venturi (2)". The central supply does not form a part of the venturi. It is

recommended applicant change "the body forming a venturi (2)" to - - and located within a venturi inlet passage formed at a lower venturi portion of the body forming a venturi - -.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-5: rejected under Double Patenting

Claims 1-5 are rejected under the judicially created doctrine of double patenting over claims 1-10 of U. S. Patent No.6,638,059 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows:

A device where gas is delivered to a conical mixing tube portion of a venturi by a plurality of gas supply tubes formed in a ring about a central tube and communicating with a central tube where the ends of the plurality of tubes are arranged appreciably parallel to the opposing wall portion (19) of the venturi mixing tube.

The more narrowly defined invention set forth in the claims of U. S. Patent No.6,638,059 anticipate the more broadly recited structure set forth in the claims of the present application.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-5: rejected under 35 U.S.C. 102(b)

Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Wall (U.S. Patent No.- 2164263).

In the claims the, recitation "***for the combustion of gas containing hydrocarbons that can be burned in the presence of air, in which fuel gas arrives by a central supply***" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). Also, in the claims, the terms **"gas supply"** used to describe the "tubes", for example, are deemed to be recitations of intended use. A recitation of the intended use of the claimed invention must result in a structural difference between the

claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). In this case the prior art reference of Wall is capable of performing the intended use of a gas supply.

Wall shows a device where gas (see page 1, lines 22-23; "inlet 2 for the admission of steam or equivalent motive fluid") is delivered to a conical mixing tube portion (19) of a venturi by a plurality of gas supply tubes (22) formed in a ring about a central tube (38) and communicating with a central tube (1). The ends of the plurality of tubes are arranged **appreciably** parallel to the opposing wall portion (19) of the venturi mixing tube (Note that the axis of any tube 22 is appreciably parallel to the opposite wall portion of the conical shaped mixing tube). In regard to claims 2 and 4, each of the six annularly arranged tubes is sized to carry 1% to 33%, or between 5% and 33%, of the total volume of gas flowing through the seven supply tubes (22,38). In regard to claims 3 and 5, the outside diameter, at the inlet end, of the central tube (38) in Wall is shown to be greater than the diameter of the surrounding tubes (22).

Conclusion

See the attached PTO FORM 892 for prior art made of record and not relied upon and which are considered pertinent to applicant's disclosure.

THIS ACTION IS MADE FINAL

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

USPTO CUSTOMER CONTACT INFORMATION

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CARL D. PRICE whose telephone number is 703-308-1953. The examiner can normally be reached on Monday through Friday between 6:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus can be reached on 703-308-1935. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1148/0858.

CARL D. PRICE
Primary Examiner
Art Unit 3749

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